IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

SCOTT AND RHONDA BURNETT, RYAN HENDRICKSON, JEROD BREIT, SCOTT TRUPIANO, and JEREMY KEEL, on behalf of themselves and all others similarly situated, Plaintiffs,	)	
vs.	)	Case No. 19-CV-00332-SRB
THE NATIONAL ASSOCIATION OF REALTORS, et al., Defendants.	)	Kansas City, Missouri November 26, 2024

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TRANSCRIPT OF SETTLEMENT HEARING
BEFORE THE HONORABLE STEPHEN R. BOUGH
UNITED STATES DISTRICT COURT JUDGE

Proceedings recorded by electronic stenography
Transcript produced by computer

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TUESDAY, NOVEMBER 26, 2024

THE COURT: Good afternoon. Welcome back, everyone. Welcome back, Mr. Glass.

MR. GLASS: Thank you, Your Honor.

THE COURT: Who will be speaking on behalf of the plaintiffs? Mr. Ketchmark? Oh, Mr. Dirks is back.

MR. DIRKS: I will.

THE COURT: From the defense?

MR. GLASS: Your Honor, I'll be speaking on behalf of the National Association of Realtors.

MR. DUSSEAULT: Good afternoon, Your Honor. Chris Dusseault. I'll be speaking on behalf of HomeServices.

THE COURT: Wonderful. Thank you.

Mr. Dirks, sir, we're here today because of your client's motion. What would you like to tell me about it, sir?

MR. DIRKS: That's right, Your Honor. It feels a little bit like Groundhog Day; so I'm going to keep it quick.

We're here on our motion for final settlement approval that's document 1595 and plaintiffs' motions for attorneys' fees and costs, which is document 1535.

Yet again, the common sense and the law support approving these motions. These settlements before you today are just under $700 million and practice change relief including removal of the mandatory offer of compensation rule.

Again, peace is achieved, and the recovery and the practice changes are substantial.

Notice here was -- reached even more class members. We've had now three significant rounds of notice, a combined reach of 99 percent of the class. Settlement's been well-received. Claims continue to come in. Class members still have another six months to file claims.

As of last week, we had over 491,000 claims. 13 objections covering 23 people. We've been overinclusive in that. There's some kind of random filings that were unhappy with the litigation. We consider them objectors and responded to those as well.

THE COURT: Some of them unhappy with me too.

MR. DIRKS: That's right, Your Honor. You can't make everybody happy.

39 exclusions. There are claims made in the state of New York of over 14,000, almost 15,000; South Carolina over 7,000; Nevada over 7,600; Pennsylvania of over 16,000. Those are class members who are participating and making a claim.

Again, this court has overseen the litigation for five years now. It's in the best position to determine the strengths and weaknesses and risks of the case. I do -- for all those reasons, the court should approve this motion, both motions.

A couple of administrative matters. As the court

has seen, there's been a lot of last-second filings. I just wanted to make sure on the same page on those. There was a filing by Mr. Whitehouse, doc 1609. To the extent it's considered an objection, it's not timely.

The Whitehouses filed an objection to the first round, the Anywhere round of settlements, and the court -- and that was doc 1424, and the court overruled that. So that's an untimely objection but in any event should be overruled. It wasn't addressed in our briefing, and it wasn't addressed in the proposed order.

Same with the Department of Justice's statement of interest. That's doc 1603. NAR responded to that in doc 1611, and we responded to that in doc 1613. Again, that was filed after we filed our approval motion and submitted a proposed order.

THE COURT: While we're talking about that one, it seems that the government is concerned that this -- my order here in some way limits their ability to enforce antitrust laws at some future time. Would you like to address if that's also your understanding of their contention?

MR. DIRKS: Yes, it is. And plaintiffs' position, you may hear different positions from the Department of Justice and NAR. Plaintiffs' position is this is a private settlement. It doesn't address what the government can or cannot do.

Paragraph 59 of the settlement agreement specifically says that the government may come after NAR, and if there's a judgment in that case, that would override anything that's contrary here.

So our position is there's nothing about this private settlement that binds the government, the Department of Justice, from further action against NAR.

THE COURT: Is Mr. Hughes or Mr. Ray here?

MR. BOWER: Chris Bower on behalf of the United States.

THE COURT: Welcome, Mr. Bower. How are you, sir?

MR. BOWER: Very good.

THE COURT: We'll make sure you have an opportunity to speak. Thank you.

MR. BOWER: Great.

MR. DIRKS: Two more late filings. There was a motion for intervention filed by a group of Texas NAR members. That's document 1605. We responded yesterday or maybe this morning even in document 1614. Again, untimely but was not in our motion or in our proposed order.

And then on my way into the courthouse today, document 1616 was filed by the Pennsylvania objectors purporting to incorporate by reference other objections. That is untimely and the court should overrule that as well.

If you have any questions for me, I'll be happy to

answer them. Otherwise, I'm happy to sit down and let other folks talk.

THE COURT: Thank you, Mr. Dirks.

Mr. Glass.

MR. GLASS: Good afternoon, Your Honor. It's good to see you again.

THE COURT: Good to see you, sir.

MR. GLASS: Your Honor, may it please the court, Ethan Glass on behalf of the National Association of Realtors. With me today, Sarah Topol you might remember from trial, our general counsel Lesley Muchow, and our senior counsel Charlie Lee.

Your Honor, maybe I'll start with the Department of Justice to make very clear what NAR's position is with regard to the DOJ. NAR is not going to use any settlement to impair the Department of Justice's ability to enforce antitrust laws.

However, there is one very important piece that I think needs to be made clear. If the Department of Justice wants to investigate or bring a case against NAR for following the court's order in the final approval, that creates a very serious problem because that is a collateral attack on a finally approved settlement as well as this court's order.

So the very narrow circumstance that I'd like to raise with the court with regard to the DOJ is the circumstance of if we are doing what we are required by this

court's order to do, that we cannot then be sued for complying with the court's order.

Now, if the Department of Justice had a concern with either the settlement's provisions or the court's final approval, there was a process under our Rule 23 where the Department of Justice could have come in, could have made an objection, and there could have been a discussion. And that is the process that's set forth in the federal rules to address concerns with what's required under the court's order.

The Department of Justice failed to do that. In fact, they only filed their statement of interest Sunday night. So I want to make clear that we are not looking for immunity as the Department of Justice suggests. We are not looking to preclude any ability for the Department of Justice to conduct an investigation of potential anticompetitive conduct.

We only want to make sure that we are not in a situation where by merely complying with a United States federal court order, we're then subject to a collateral attack from the DOJ or anybody else.

And that's the second piece is the DOJ seems to suggest that other people could sue NAR or its members for complying with this court's order. And so I just want to make absolutely clear that that is really our concern is not to be squeezed.

THE COURT: How do I -- how do I address that concern in this settlement or other orders?

MR. GLASS: Thank you, Your Honor. You don't need to. So as we cited, Justice Ginsburg in a concurrence in an antitrust case said those questions are for a later time. They're not for class approval, settlement approval time. And this is why --

THE COURT: Did your cocounsel assist in that case cited by -- written by Justice Ginsburg?

MR. GLASS: May have.

The critical question is what exactly does the Department of Justice want to do to NAR? As far as we can tell from the Department of Justice's filing and our several meetings with the DOJ, the DOJ doesn't know what it wants to do. It wants to preserve the ability to do anything. So I think that leaves the question to be unripe for this court.

What we suggest is that the court enter final approval, as it has in the other cases, issue its order, and then if at some later time a dispute arises where we believe that the Department of Justice is challenging this court's order and the Department of Justice believes it's not, then we can come back in front of Your Honor and we can have the discussion with Your Honor and Your Honor can rule. But to ask the court to hypothetically and in abstract say that there may be some potential issue that NAR is -- and its members are

unable to argue it's only doing because of court order, that's the bridge too far.

And so we ask that the court just enter the final approval and that if the Department of Justice has some issue in the future and we can't come to a resolution with the Department of Justice, we'll be back before Your Honor. And that's the right time.

THE COURT: And would it be NAR's position that I should put something in the -- this particular order that says I retain jurisdiction over any disputes about the enforcement of this?

MR. GLASS: Absolutely, Your Honor, and I believe -- I don't want to speak for plaintiffs. I believe that is our intent all along is that any disputes surrounding the settlement or the final approval will come back in front of Your Honor. And so if it's a situation where there's a dispute over the interpretation of your order, Your Honor, we would expect that that would come back before Your Honor. We, of course, can't speak for the Department of Justice, but that is our intent.

THE COURT: Sure, sure.

MR. GLASS: Your Honor, now that I've put that aside, the court has received mountains of paper, but there is some -- a really important point that I want to make sure that I highlight for the court. The settlement between NAR and the

class was the path forward. It was the path forward for NAR. It was the path forward for the class. It was the path forward for Multiple Listing Services, realtor associations, our members, their businesses. It was the path that allowed the entire world to move on and conduct business in the regular course.

I want to take the court back to March of 2024. Now, it seems like a long time ago because it kind of was, but we settled on March 15th, 2024. Prior to that settlement, there were dozens of pending pile-on cases against NAR, its members, Multiple Listing Services, realtor associations. There were hundreds of defendants. Every day new cases were being filed, and there was no end in sight. So the critical piece that NAR received by the settlement was certainty, was allowing us all to move forward.

Now, NAR felt pretty confident about its appeal of the jury verdict, but NAR still faced uncertainty. One, to even get to an Eighth Circuit decision would take years, and in the meantime, it would put at risk NAR, its education, services, resources, and support for all real estate. It also would have risked extinction, not only for NAR but for all of those members, small businesses, associations, multiple listing services who had been or would be sued.

And I'll tell you that we're lucky that we were able to pay the litigation costs to actually get to a decision.

Most of the people who were sued would have been put out of business just by hiring lawyers. So they would never have been able to vindicate whether they were right or wrong, and they would have had to go out of business to pay lawyers to defend NAR's ruling.

Also in March prior to our settlement, the marketplace was confused. We can all go back and look at the press coverage, but I can tell you from our touches with consumers and members, that there was a huge question mark on whether or not every broker in the country was going to be sued. Was it a liability to even be a real estate broker anymore? Could you have a real listed business providing real estate brokerage services without the risk that you were going to have extinction level litigation?

Second, consumers were confused as well. Consumers received piecemeal reports about what happened in this courtroom, what the verdict was about. They were unsure they would even have the access to brokerage, the choice to hire brokerage. Again, if they want to hire brokers, it's okay. If they want to hire a nonrealtor, that's okay, but there was a question about what does this mean for buyers and sellers.

Now, we were faced with a potential catastrophe. Had NAR done what it wanted to do, which is proceed through to an appeal before the Eighth Circuit, there was a risk that all of those entities were going to either be put out of business

or materially change, and a material change is we -- no good for anybody.

As I remind the court, 3 to 5 percent of the U.S. economy runs through real estate. So the gamble on waiting two years for a decision from the Eighth Circuit was seriously gambling with everybody's money.

So over a long period of time, we had hard-fought negotiations for the settlement, and I'll tell you that on the NAR side, we have a leadership team, and that leadership team debated, discussed, scrutinized, and analyzed every potential settlement, every discussion that we had with the plaintiffs. And they ended up reluctantly agreeing to what is on the paper.

On the other side, we negotiated with a large group of very experienced antitrust class counsel. It's actually amazing in retrospect that we were able to get to a deal in that context.

THE COURT: I went through a couple weeks of trial with you all. I recall.

MR. GLASS: So in the end, we ended up with a settlement that gave extensive concessions by the National Association of Realtors and its members.

First, we gave up our right to appeal. We didn't want to but we did.

Second, we gave $418 million which is the largest

amount of any defendant. In fact, it's almost double what the next largest defendant is paying, and it's a significant portion of the fund that these 400,000 claimants are going to receive. And that's even though the National Association of Realtors didn't receive one penny in commissions throughout this time period. NAR's paying the most.

Second, NAR agreed to about a dozen practice changes. Again, these are practice changes that were heavily discussed and negotiated. Those practice changes were actually effective in August. NAR agreed to put in place those practice changes as promptly as it could, even before it had final approval, to make sure that we were in a place that we could come to this court and say it's a fair deal.

And NAR agreed to a settlement that did not have a comprehensive release. So there's been a lot of discussion by the objectors about the releases this and releases that. But from NAR's perspective, the release was much less than we wanted. The release still left a significant portion of our members' businesses exposed to litigation, and, in fact, a lot of those members have had to pay significant amounts of money to the class settlement fund because they weren't covered by the NAR settlement.

So why did NAR do this? It did it because it had a responsibility to provide certainty to everyone, to NAR, to its members, to their businesses, to associations, to Multiple

Listing Services, to buyers and sellers. And I'm proud to say, and the facts are in the plaintiffs' brief, over 99.99 percent of the class has embraced this settlement.

Now, there's a small amount of objectors, and I already spoke to you about the Department of Justice. Our concern is not that we provided immunity but instead that we not be precluded from defending ourselves; that if the Department of Justice doesn't like something that we're ordered by the court to do, that we're not getting stuck between a court order and a DOJ investigation. And that's for a later date.

The second group is a number of pile-on lawsuits, all of which were filed years after this plaintiffs' group brought their case.

THE COURT: Were all those pile-on or copycat or additional lawsuits, whatever we want to call them, they were all filed within days or shortly thereafter the verdict in this case?

MR. GLASS: All but one. So the one case that was filed before the verdict was the case in Chicago, but that was years after the first Chicago case, *Moehrl*, was brought and the case that went to trial here was brought. And then every single other case was brought immediately after the jury verdict in this case. And they were continuing. It was basically from November 1st through March, new lawsuits on a

regular basis.

Now, what the bulk of those people object to is that they want to be able to bring their own case. Your Honor, Federal Rule of Civil Procedure 23 provides a route to bring your own case. There was notice and there was an opt-out. So they could have protected themselves by merely opting out.

The fact that they chose to stay in the class, to get the benefits of the class relief at the same time that they're saying that the class relief isn't enough is inconsistent. Their choice not to opt out means that their objections, that there wasn't enough and they wanted to have more or they want to bring another case, is invalid.

The last thing I'll mention is that there were a number of -- we took the same approach as Mr. Dirks -- statements, objections, et cetera, varying to the relief is great but people aren't following it to the relief is bad and there should be no relief. The plaintiffs address much of that in their brief.

What I'll tell you is in the end, the settlement agreement's plain language controls. What the plaintiffs say, what the third parties say, what the objectors say, it's all irrelevant. What matters is what the plain language says and what the court's final approval order says. And then we will be subject, NAR will be subject to a binding obligation from a United States federal court with the penalty of contempt to

follow that.

And the idea that a class settlement would not be approved because people think that we're going to violate the order is inconsistent with our whole system. Every single class settlement could be accused of that. What I can tell you is that as an officer of the court, I take very seriously the obligations. I know the National Association of Realtors takes very seriously its obligations, and the plaintiff said several times that if we don't, we'll all be back here before Your Honor and Your Honor will be able to take appropriate action.

So, Your Honor, all the objections lack merit. We respectfully request final approval, and I'll reserve whatever time I have just in case I need to respond to an objector.

THE COURT: Thank you.

MR. GLASS: Thank you, Your Honor.

THE COURT: Mr. Dusseault, sir.

MR. DUSSEAULT: Good afternoon. Chris Dusseault from Gibson Dunn on behalf of HomeServices.

THE COURT: Mr. Dusseault, I'm sorry.

MR. DUSSEAULT: Absolutely fine. Thank you, Your Honor.

I'm going to be very brief and make just two points that are specifically directed to the HomeServices settlement to which there have only been three specific objections that

are directed to our settlement. The first is a point of which Your Honor is very aware, which is that this court has already granted final approval of settlement with the three other corporate defendants in the *Burnett* case.

The objectors notably, despite the many arguments they do make, make no argument as to why the outcome as to our settlement should be any different than those other three. And there is no reason. The substantive terms of the settlement are substantially the same. Notice process was substantially the same. The conduct changes are substantially similar as well. The objections are virtually identical, in some cases word for word the same, as the ones you've already considered, and the only meaningful difference, frankly, is that the compensation paid is the greatest in our case as compared to the other three.

So it's our view that no reason has been presented to the court to come to a different outcome as to HomeServices than you did as to the other three. And obviously the court has also granted final approval of additional settlements in the Gibson case as to which many of the same objections were made.

The second point I would make, Your Honor, is that just to be clear on the record from the perspective of the person who was involved in negotiating this settlement, the very issues that the objectors raise and they talk about class

relief being nationwide. They talk about franchisees getting release. They talk about people not being able to turn around and say, well, now I'm an indirect purchaser or buyer whereas all I released was my direct purchaser or seller claim.

Those issues were all of critical importance to getting a deal done for the very reason that Mr. Glass mentioned, which is you're looking for peace and closure here. That's what you're trying to look for. The plaintiffs were aware of that, and you can't have an outstanding outcome like you have in this case in our settlement if a company like HomeServices faces, you know, a panoply of other lawsuits throughout the country or everyone just changing their legal theory or saying, well, we released you but we're going to go after all of your franchisees.

So the settlement is good for the class members. It's a good outcome for the parties involved, and we would urge the court to grant final approval.

THE COURT: Thank you.

MR. DUSSEAULT: Thank you.

THE COURT: Mr. Bower, sir.

MR. BOWER: Yes, Your Honor. Good afternoon.

THE COURT: Good afternoon. Did you work with Mr. Glass when he was at the DOJ?

MR. BOWER: Unfortunately not. I would have learned a lot.

I just joined in 2020.

THE COURT: Congratulations.

MR. BOWER: Thank you. Thanks for the opportunity to speak at today's hearing.

The Department of Justice filed a statement of interest on two narrow issues. First, the department wanted to ensure that defendants would not be able to use this settlement as a shield against our investigation or any future enforcement actions.

Now, the court might find that the settlement is adequate and in the interest of the private litigants under Rule 23, but that doesn't mean that it effectively remedies past or current violations.

THE COURT: How long has the DOJ been kind of sniffing around on this? Because they were an interested party at the very beginning of this lawsuit, and then forgive me if I'm describing it wrong, in essence just watched up until this statement of interest. I feel like there was issues going on prior to this lawsuit that -- "sniffing around" might not be the right word. Investigating. How long, do you know?

MR. BOWER: So we've been in litigation with NAR about our ability to investigate certain practices that are related to this litigation, and those were only resolved this year. And they're still --

THE COURT: Way before this lawsuit, you were engaged looking at NAR; is that fair?

MR. BOWER: We were prohibited from -- our CID was squashed by the district court, and then we succeeded on appeal and that's up -- they filed cert recently on that.

So we were able to issue a CID earlier this year in May. So that's when we were specifically investigating NAR.

THE COURT: But you've been investigating NAR for a decade?

MR. BOWER: The department has been investigating issues in the real estate space, including conduct by NAR, for decades.

THE COURT: Okay. Thank you.

MR. BOWER: Sure.

So as I mentioned, the court might find that the settlement's adequate for the private litigants, but that does not mean that it effectively remedies current or past violations. NAR filed a response to our statement, which construes our concerns as a res judicata issue. They are not.

What we're asking of the court is to make clear that its Rule 23 decision does not address whether the settlement effectively remedies past or current antitrust violations. That question is not before the court, and we're asking the court to make that explicit.

Second, we wanted to raise concerns about the

provision in the settlement that requires buyer brokers to obtain a signed agreement from buyers before showing a home. We think that provision is facially problematic because it's an agreement that restricts how brokers compete. The department wants to protect its ability to investigate that provision and bring an enforcement action if necessary.

In response to Mr. Glass' earlier statements, NAR itself has made clear in its filing in its response to our statement that it's only required to follow the provisions of the settlement insofar as those provisions aren't illegal. But how else would one determine whether or not the provision is illegal and violates the antitrust laws except for through an enforcement action? So that's what we're trying to preserve here.

The department wants to protect its ability to investigate and to enforce the antitrust laws, and we're asking the court to make clear that it's not your intention to immunize provisions in the settlement from antitrust enforcement by the government.

I'm happy to take any more questions, Your Honor.

THE COURT: Do you have any problem with saying that any disputes about the enforcement of my settlement agreement order should come back in front of me?

MR. BOWER: I think we would object to that. I think we would reserve the right to file an enforcement action

in any proper forum.

THE COURT: I can understand the confusion of everybody here; plaintiffs, NAR, DOJ. The DOJ's been looking around at this for a while. I hear there's change coming at the DOJ next year. You may have heard the same. Who knows what's going to happen, right?

And let's say you do start some sort of investigation or file an enforcement action, NAR may believe that it's somewhat contradictory to my order that they're then following. Help me understand more why if it's issues that are in my order now that we have a DOJ statement of interest in my case and you've been an interested party in my case since the beginning, why that all shouldn't come back here.

MR. BOWER: Your Honor, I'm just not in a position to waive any right to file an enforcement action in any court that is proper.

THE COURT: Probably we shouldn't call Judge Garland right now?

MR. BOWER: Probably not. That's all I can say.

THE COURT: That's all you can say. Okay. Appreciate you, sir. You might -- before you go all the way back, you might just hang close because we're going to discuss this a little bit more.

MR. BOWER: Thanks, Your Honor.

MR. GLASS: Hi, Your Honor. I promise not to do

this to every objector, but if I may respond to a couple things.

THE COURT: Yeah. And I won't let you.

MR. GLASS: Absolutely fair.

So, first, this particular investigation that Mr. Bower's talking about has been open since the first Trump administration. It is true that we were able to get in the United States District Court for the District of Columbia an injunction against that investigation, but it has nothing to do with what they're arguing here.

The argument there was we had settled with the Department of Justice and they were repudiating on that settlement. That did not prevent the Department of Justice in any way from filing the brief and intervention that it did in this case, this particular case, showing up in this court in the last six months.

And this is the problem with a Sunday at 7 p.m. central time filing when there's a final approval hearing on Tuesday at 1 p.m. central time is that we are being -- you are being put in a very difficult position for no reason. If there truly was concern with the written buyer agreement, that's long past.

But what we're saying is very, very important, which is that if NAR is compelled under pain of contempt to require written buyer agreements, it can't be that there is an

investigation, a litigation, or anything by someone challenging NAR for doing that and circumventing this court's order.

So I think the solution that Your Honor has proposed is the right one. If that's what they want to do, they should come back to this court and they should talk to this court about its order. Not sue NAR in a far-flung district where we may have the difficulty of getting before this court.

One last thing -- I'm sorry, Your Honor.

THE COURT: Would you or someone else on your team email everybody in this -- all the lawyers in this litigation maybe by noon tomorrow some language. As I'm writing the language out, I have very unsophisticated current language of you want any disputes back in front of me. I think maybe the language could be a little bit more artfully crafted, and Mr. Dirks is going to tell me it's already in there at paragraph --

MR. DIRKS: Yeah. You're exactly right, Your Honor. I was going to point out paragraph 174 in the proposed order, which says, The court retains continuing and exclusive jurisdiction over all matters related to the administration and consummation of the settlements and to interpret, implement, administer, and enforce, and it goes on. I do think that that addresses the concern.

MR. GLASS: It was only paragraph 174, Your Honor.

MR. DIRKS: The final one.

MR. GLASS: Yeah. Just ten seconds on the first thing Mr. Bower said.

We are not arguing that this settlement prevents the Department of Justice from investigating past or future antitrust violations. That is not our argument. We are not going to argue that because we settled, we're now immune and we can go out and price fix or engage in other criminal conduct.

It's really just this very narrow focus of once we're ordered by a court to do something, the time has passed for somebody to order -- have the court order something else, and they shouldn't be able to then just sue NAR over its compliance with the court's order.

Thank you, Your Honor.

THE COURT: Are you okay with paragraph 174 as written?

MR. GLASS: Yes, we are. Thank you, Your Honor.

THE COURT: Mr. Bower, sir, anything additional?

MR. BOWER: I'm sorry. What was your question, Your Honor?

THE COURT: Anything additional?

MR. BOWER: No, no. I'm sorry. I thought you said more questions.

THE COURT: Well, next we're up to objections, and I

believe they are currently in inverse order of being filed because I have a wonderful courtroom deputy who knew I wanted a notebook so I could read each and every one of them, which I have done.

So we're just going to go through them in inverse order. Our friends from South Carolina requested more time. I'm reluctant to give everybody ten minutes because of the volume that we have. I'm asking everybody to try to limit it to five minutes. As in the past, I don't have a stop clock on anybody, and as long as you're talking about important, relevant topics and you're not getting too far off and you're not just -- I can read and I do read. So if you're going to read to me, I'll cut you off at three minutes. If you are going to tell me something insightful and give me a good summary of your arguments, I'll be more than glad to listen.

But I also don't want to spend the rest of the day here and probably like many of our local counsel, I'll see you at the chamber of commerce dinner tonight at five o'clock.

So first up, Document No. -- and I'll -- for the record because, as all of you know, we get lots of people interested in the docket and lots of people who like to question my rulings in newspaper articles and in filings. I try to be overinclusive in allowing objectors here.

My goal is anybody I can think was objecting about anything relevant here, I put them in the notebook. So

someone will complain that I called their name and they weren't here and they were really objecting about something else. But I'm trying to be overinclusive rather than underinclusive on the objectors.

1609 is the Whitehouse folks. Anybody here? Mr. or Mrs. Whitehouse?

Next we've got 1594 and 1553, Monty March and our friends from South Carolina.

MR. BUCHMAN: Good afternoon, Your Honor. Michael Buchman.

THE COURT: Come on up, Mr. Buchman. Well, sir, some of my criticisms of some of the objectors is they would never be able to float the $13 million in litigation expenses. I can't say we could say that about Motley Rice.

MR. BUCHMAN: Good afternoon, Your Honor. Thank you.

THE COURT: Good afternoon.

MR. BUCHMAN: Not quite sure how to respond to that but it's noted. Thank you very much, Your Honor. I appreciate being able to appear and lodge an objection on behalf of plaintiff Monty March.

We represent Mr. March in connection with claims involving REBNY Manhattan. There's also the Friedman action which involves REBNY Brooklyn. Briefly, Your Honor, I've limited my presentation to about two or three minutes. I am

aware of your position, and I will endeavor to honor that.

There is no factual support from which to conclude that the REBNY conspiracy alleged in the March and Friedman actions arises out of the same factual predicate as alleged in the NAR action. REBNY and REBNY RLS are not parties to the NAR settlement. The March action is not a copycat action. The Burnett complaint contains no mention of REBNY or REBNY RLS.

And indeed, Your Honor, the March action was the first filed action in this country concerning REBNY New York and REBNY Manhattan specifically regarding commercial -- or, sorry, regarding residential real estate transactions in Manhattan.

The *Umpa* complaint makes mere passing reference to REBNY New York. That action was filed after the March action. NAR and REBNY have no affiliation. REBNY actually broke away from NAR in 1994 and has promulgated its own rules and its own regulations concerning New York City's residential real estate market. The two have absolutely nothing to do with one another.

And counsel for REBNY made clear during the JPML proceedings that there is no association between NAR and REBNY New York. The rules are different. The market is different. The defendants are different. The time period in the March and Friedman actions are different than the time period in

this action. There is no nexus between REBNY Manhattan, REBNY Brooklyn, and the NAR actions that are before this court.

Plaintiffs in this action cite portions of the March complaint to contend that we allege the same factual predicate. That's simply not the case. What we did, Your Honor, was we alleged facts concerning the REBNY market involving its different roles concerning its different market concerning its different time period and different defendants.

The bullet point they cite on page 91 from our -- of their brief from our complaint merely demonstrates this similar effects, the similar effects, and the separate and distinct conspiracies, not the same facts.

Plaintiffs' assertion that there are 17,000 NAR members in New York City in their papers is irrelevant. What matters is where the transaction occurred and what rules govern, and in REBNY Manhattan, REBNY rules govern. NAR actions do not -- sorry. NAR rules do not regulate that market, and, again, REBNY counsel said to the JPML that when you're dealing with REBNY Manhattan, it's REBNY's rules that governs, not NAR's rules, not even NAR's code of ethics, which plaintiffs suggest in this case that their code of ethics govern in REBNY Manhattan. They simply do not.

The fact of the matter is that the opt-in defendants have repeatedly conceded that the REBNY conspiracy is separate from NAR. REBNY members transacting in REBNY New York do not

operate under the NAR rules because REBNY has its own rules, which REBNY members are required to abide by.

And let me add to that point. There is a written requirement when agents and brokers in Manhattan join REBNY. There is a form that they need to fill out, and at the bottom of that form, there's a check box, and that check box specifies that that member or agent will abide exclusively by REBNY's rules and REBNY's code of conduct when conducting business in REBNY New York City, the five boroughs of New York City.

But what is most telling here is that -- what is most telling here to demonstrate there's no identical factual predicate between the NAR and REBNY actions is the requirement as part of this settlement that there is a condition for opt-in defendants to withdraw all of their admissions highlighting the numerous and detailed distinctions between the NAR and REBNY rules and actions as judicially admitted before the JPML in writing and at oral argument.

Plaintiffs in this action realize that there is no identical factual predicate between the NAR and REBNY actions, and they want nothing to do with any prior assertions made by sophisticated REBNY market players which undermine their alleged nationwide conspiracy in an effect to rope in the REBNY plaintiffs like the March and Friedman plaintiffs into this action.

I know I'm probably just about going over my time limit. I have one more point very briefly to make.

And that is we've heard mention here this afternoon about 14,000 claims that were filed from New York. I want to be very clear. We've looked at those claims. Those 14,000 claims were from the state of New York. They were not New York City specific. So the assertion that 14,000 claims support this settlement from REBNY Manhattan is not correct.

Thank you, Your Honor.

THE COURT: Thank you. Mr. Knie, 1593 from South Carolina.

MR. KNIE: Yes, Your Honor.

THE COURT: Welcome back, sir.

MR. KNIE: My third trip here, Your Honor.

I'd say that we have complied with all the deadlines and have responded to the court's orders and not only am I here but my two colleagues are here because of your court's order that all objectors and all attorneys for objectors be present. I do appreciate the leniency on the time.

THE COURT: It's hard to tell a guy with a southern accent no. You've used it before with juries.

MR. KNIE: I was born in Connecticut, Judge, but I've lived in South Carolina for about 60 years.

So, anyway, Your Honor, as an initial matter and the court well knows this, the court is here today to act as a

fiduciary to protect the rights of 35 million home sellers in this precertification fairness hearing.

And, frankly, I believe that these -- their rights are being trampled on because they're asking to give up their right for a jury trial in exchange for approximately $35 each. The court may say, well, they've got a right to opt out, but to opt out, you've got to have the information and know whether you should opt out. And if you look at the class notices, there's no information in the class notices to help a potential opt-out understand whether they're getting $35, $1,000 or $5,000.

In the present case, the average damage per home seller in the United States is $14,000. Obviously, $35 is not nearly enough to in any way compensate them for their loss.

The Sherman Antitrust Act cases are different from consumer class actions because the victims are entitled to ample compensation. The Supreme Court case of *Blue Shield of Virginia v. McCready* outlines that very specifically. Obviously $35 is not substantial compensation.

Now, when I say these settlements are inadequate, I mean, we've got a $1.8 billion verdict and that involved 500,000 Missourians, and that has been bartered away for a national class. And they've only gotten 60 percent of the verdict, about a billion dollars towards settlement.

In contrast one of the plaintiffs' firms, Cohen &

Milstein, in what was always a national class action, *In re Urethane*, took a $400 million verdict and parlayed it into a billion dollar settlement. The exact opposite is happening here. While I'm mentioning that law firm, in its website they acknowledge that the average home seller has been damaged by thousands of dollars, yet the same time they're here as proponents of this settlement today.

One of the factors that the court must consider is the financial condition of the settling parties. There has been no independent report of an economist presented by these parties. Instead the court has asked to rely on self-serving declarations of plaintiffs' counsel saying that, you know, we negotiated these settlements real hard and we think they're fair.

Well, first of all they're not economists, they're not statisticians, they're not mathematicians. They're attorneys. It's clear that this court as a gatekeeper needs more information to approve this settlement.

We wrote plaintiffs' counsel requesting financial information, and I've got copies of that letter. I would like to hand up a copy to the court as an exhibit, if I may.

THE COURT: Sure.

MR. KNIE: I would like to address the opt-in briefly. The opt-in proposal is clearly inequitable because it arbitrarily chooses a cutoff of $2 billion a year and

arbitrarily chooses the year of 2022. In the poor state of South Carolina, we only have one firm that earned over $2 billion a year in 2022. The next largest firm earned $1.6 billion. Why should they get out without paying a dime? It seems to me that there should be a sliding scale from the richest to the poorest firms, but everybody should pay their way.

The settling parties agreed to hard deadlines to opt in and specific requirements to do so. This court approved those deadlines and requirements. Almost all of those were not met or, otherwise, the documents were not properly executed.

We asked -- we wrote counsel and said could we please get that information that was missing because class counsel in its filings claimed that they had fully-signed documents. I would like to hand up that letter as well, Your Honor. And we've heard nothing in response.

May I approach?

THE COURT: I marked the previous one Court Exhibit A, and I'll mark this one Court Exhibit B.

MR. KNIE: Thank you, Your Honor.

THE COURT: You might wrap her up.

MR. KNIE: And I'm about finished, Your Honor.

So we would submit that the opt-ins should not now be approved by the court since they did not meet the deadlines

and they did not file what they set as their own rules and regulations.

Another problem is that the brokerages of less than $2 billion a year is they are released without providing any proof of certain practice changes. There's no evidence that any practice changes have been accomplished. Nobody has said we'll comply. Basically it's going to be business as usual, Your Honor. There's no consideration for their release.

In short, the proposed settlement is inadequate. It lacks due process and should be rejected by this court.

THE COURT: Thank you.

MR. KNIE: Thank you.

THE COURT: Sir, just confirming, none of your clients were able to make it today?

MR. KNIE: They were not.

THE COURT: Thank you.

MR. KNIE: If I could address that, Your Honor. No Federal Circuit Court has ever said that an objector or an objector's attorney had to be present. There are just two district court attorneys from outside the Eighth Circuit that address that.

THE COURT: Thank you.

Mr. Buchman, I've got your letter about Mr. March. I'm assuming Mr. March isn't present, true?

MR. BUCHMAN: That's correct, Your Honor. When we

filed our objection, it was provided he could speak through counsel and he was prepared to do that and filed his papers under that assumption.

THE COURT: Thank you.

MR. BUCHMAN: Thank you.

THE COURT: How about 1563 which was filed by Mr. Andrew Horowitz and Bruce Fox.

MR. FOX: Yes, Your Honor.

THE COURT: Come on up.

MR. FOX: May it please the court, Bruce Fox on behalf of the objectors from the Western District of Pennsylvania. We substantially accede to and agree with the arguments that have been made by the other objectors. They're no different in our case.

We do represent six objectors from western Pennsylvania, and one of them is here with me today, Francois Bitz. He's in the back of the courtroom.

The others, Your Honor, were simply not able to attend. They're working people and they couldn't get away for this hearing given their finances and other obligations.

But, Your Honor, western Pennsylvania is also a unique environment. We have a local real estate market with its own local players, including the West Penn Multi-List. Now, that's not associated with NAR in any way. In western Pennsylvania, we had a conspiracy, restraint of trade between

that local MLS and the local brokerages that has harmed the western Pennsylvania home sellers for years.

Now, we've discussed in our papers why we think our case is different. It's not associated with NAR. It's not dependent upon the NAR rules, and it's a local dispute. The absent class members in our case, like everywhere else, have been forced to give up their right to a jury trial in exchange for what amounts to a coupon settlement.

Now, NAR purports to sell on its own behalf but also on behalf of smaller brokerages, which while smaller, were also active participants in the conspiracies. These smaller brokerages are released by the settlement agreement without having to pay anything at all, and the settlement amount is miniscule in proportion to the actual damages sustained by the settlement class, and it's tiny even in proportion to the jury verdict that was awarded here in the Western District of Missouri.

The settlement amount is purportedly based upon ability to pay, but as with all the defendants, we also have not received any financial information despite the fact that we have asked for it as well from NAR. We've been completely stonewalled.

Now, since the objection deadline, NAR has shown to be profligate in its spending and grossly irresponsible. Just last week, Your Honor, a *New York Times* article published on

Tuesday, front page article, entitled, Chauffeured cars and Broadway tickets, inside the National Realtors group. The *New York Times* revealed the extent of NAR's excesses and financial abuses.

I won't recount them here, Your Honor, but the pattern of behavior revealed that NAR is very unusual and alarming for a nonprofit, and it makes it even more difficult to give credence to the unverified claims that NAR cannot afford to pay more to pay a just amount under these circumstances. Given its profligate spending and its behavior, the court should carefully scrutinize NAR's finances and permit objectors to take discovery.

Also regarding HomeServices, HomeServices is paying only $250 million. This is a settlement on behalf of not only HomeServices itself but also franchisees across the nation. The franchisees made money by fixing inflated commissions, but are paying nothing in the settlement.

The proposed settlement doesn't account for the franchisees' ability to pay. No information has been provided about any of the franchisees' ability to pay. Forcing the franchisees to contribute would generate a much larger settlement fund for the class members, of course. There are resources there that haven't even been tapped or investigated.

Instead this settlement seeks to take away western Pennsylvania home sellers' ability to collect damages from the

franchisees and replace it with what amounts to a coupon settlement while the franchisees pay nothing.

Let me conclude by pointing out that the amount of the proposed settlements are, as Mr. Knie ably argued, vanishingly small compared to the harm that has been done. Those amounts are based on representations of the now aligned plaintiffs and defendants which the objectors have never been able to review or independently evaluate.

The practice changes have been calculated to allow conspirators across the nation to continue to impose inflated commissions on customers just through other means other than the MLS. Many of those issues concerning the practice changes, Your Honor, have been the subject of other objections which we have incorporated by reference into our objections.

So for these reasons, the western Pennsylvania objectors ask that the motion to approve settlement be denied.

THE COURT: Did you tell me your client's name was Mr. John Mauritz, the gentleman who's here?

MR. FOX: Yes, that's Mr. Francois Bitz, B-i-t-z, and he is representing Spring Way Center, LLC. He's the sole member of that.

THE COURT: Oh. Thank you.

MR. FOX: Thank you, Your Honor.

THE COURT: Mr. Mullis, Document No. 1561. Welcome back, sir.

MR. EWING: Good to see you again, Your Honor.

THE COURT: You too.

MR. EWING: So we're a bit differently situated than most of the other objectors. First, our case was filed in January of 2021, almost four years ago. We looked at these allegations of the other two cases that were on file, and we thought they were missing something, which was essentially that buyer broker commissions get passed on to home buyers. Everybody knows that. The defendants have said it in this litigation, the Department of Justice has said it. Our experts are going to show it. It's a simple fact that buyer broker commissions impact the prices paid by home buyers. So that's why we brought our case.

And we're not here to have you reject the settlement. The settlement can stand on its own terms with the release language that's currently in there, the identical factual predicate language.

What we're actually objecting to is the inclusion of additional language in the order that goes even further and applies that test to our case, and that shows that they actually know -- the parties know how to use clear language when they want to. If they wanted to say in the settlement agreement, you know, all claims for anybody who ever bought a home on an MLS based on antitrust violations are released, they could have. They could have done that in the notice.

No, they save that language just for the order on the day before.

Now, Mr. Glass said 3 to 5 percent of the economy is affected by housing. I think this might be the largest antitrust case there possibly ever is, and there needs to be somebody here advocating for home buyers. Nobody in this courtroom has --

THE COURT: I hear the Visa one is even bigger.

MR. EWING: It might be. But nobody in this courtroom is advocating for homebuyers. Now, the reason our claims should not be released is because they are different claims. I received a response to responses and objections from NAR and HomeServices last week in our other cases.

I asked for the expert reports and the deposition transcripts that were created in this litigation, and here's what I was told by NAR. No, because it's different claims and different parties. That's their position last week.

That was plaintiffs' position when they went to the JPML six months ago and said all these settlements mean all these cases should be consolidated except for the one that's different, and it should stay different. And that was their co-defendants' position when they were asked by Judge Wood last year at the status hearing, These settlements that are coming in place from my understanding, they don't require any stay in the *Batton* case and don't have any impact in the

Batton case. And their co-defendants, not them in fairness, their co-defendants, but with the same settlement release language said, That's correct, Your Honor, they don't have any impact on this case. And it should stay that way because that's how Mr. Mullis has litigated.

These cases have been litigated separately for three years, and they're trying to introduce a claim preclusion argument because they can't actually find any cases to apply the identical factual predicate test to indirect purchaser claims. There are none. They haven't addressed any of the ones that are in our papers. So they come up with a claim preclusion argument. The claim preclusion is based on transactions, black letter law, different transactions, different claims.

But if it was a claim preclusion argument, in the four years that the *Batton* case was being litigated, why didn't a single defendant move to dismiss for claim splitting or to transfer or to stay? The defendants were happy to litigate this case separately, and when the defendants raised the pass-through issue in opposition to class cert and in opposition to summary judgment, the plaintiffs said we don't have to set that off because under federal law, direct purchasers don't have to set off any benefits or, you know, damages that they would have passed on to other people.

And that's right. And they got the benefit of that

because they stood in here and they said we are limiting our case to direct purchasers and they should have to abide by that decision. This case should be settled on the basis in which it was litigated.

You've heard the defendants say that it was critical as part of the negotiations to resolve the indirect purchaser claims and to buy peace yet at the same time in their papers, they say, well, these claims are still going on. So we don't actually -- and if it was that critical to resolve the indirect purchaser claims, you would have thought they would have brought in the counsel who was litigating them for four years.

So we don't actually have any evidence or any knowledge whatsoever that these claims were actually part of a meaningful negotiation as opposed to generic release language that's now being used while they're working together to strangle the *Batton* claims. And they shouldn't be able to do that under Rule 23 because Rule 23 requires equitable treatment of all class members. Supreme Court has said that.

And there are -- there are people who bought homes in this class who are going to get less damages because it's going to go to people who only sold homes. There are people who bought a whole bunch of homes in this class who are going to get less damages because it's going to go to people who bought a whole lot less homes, and that is inequitable

treatment.

The only rebuttal they have to any of that is the cited 1992 case 26 years before the 2018 amendments to Rule 23 came out, years before *Amchem* and *Ortiz*, a 1992 Eighth Circuit case that says, well, it's enough that everybody can make a claim. That's equitable treatment. That's not the law anymore, Your Honor. That might have been the law 30 years ago, but that's not the law anymore.

Somebody needs to make sure when these funds are being distributed, that a basic economic principle everybody in this courtroom knows exists isn't just being made to pretend like it doesn't exist anymore.

That's all I have, Your Honor, unless you have any questions.

THE COURT: Thank you. Mr. Mullis wasn't able to make it this time?

MR. EWING: Mr. Mullis is a registered nurse and given the timing and he had work today and also with Thanksgiving, he was not able to make it. So he followed the original notice, which was mail, which is the form in which due process rights are protected.

Thank you, Your Honor.

THE COURT: Robert Friedman, Document No. 1560.

MS. McKIM: Good afternoon, Your Honor. Ellie McKim with Berman Tabacco for objector Robert Friedman.

THE COURT: What was your last name?

MS. McKIM: McKim, M-c-K-i-m.

THE COURT: Welcome.

MS. McKIM: Thank you.

Your Honor, I won't rehash all the arguments contained in our briefing or that have been articulated by the other objectors' attorneys. I'd just like to highlight a couple of key points particular to the Friedman objection in response to recent issues emphasized in the settling parties' papers.

First of all, Your Honor, we understand that this court has already ruled on the factual predicate issue in the course of the previous settlement, and while we respectfully disagree for the reasons set forth in our papers, I'd like to briefly address the parties' repeated characterization of the Friedman complaint as a copycat or a pile-on case.

In fact, Your Honor, nothing could be further from the truth. The Friedman complaint was carefully and extensively researched to identify which trade organization operated in REBNY Brooklyn, to analyze its differing governing rules, its distinct agreements, and enforcement mechanisms. The results of this analysis showed that the REBNY conspiracy is separate and distinct from the NAR conspiracy.

To the extent that the NAR conspiracy is referenced in our complaint, it is only by way of comparison. They are

not the same conspiracy. NAR is not a defendant in Friedman, and tellingly REBNY is not a defendant in this case, nor is it a settling party.

Secondly, Your Honor, the plaintiffs offered no authority to support the unprecedented proposal through which the NAR settlement would release with zero cash contribution six defendants in the Friedman action, small brokerages who operate substantially or exclusively in New York under REBNY and not NAR rules.

As we noted in our reply brief, NAR's own final approval brief confirms the limited nature of which entities and what conduct are covered by the release that NAR is paying for. The releases must apply to NAR members for liability related to following NAR's rules. That's all.

And that makes sense. Why would NAR pay to release entities that neither contribute to NAR nor are subject to liability for following NAR's rules?

Another problematic aspect of the settlement is that the plaintiffs would have this court believe that it could approve a release of prior misconduct simply by virtue of a defendant's after-the-fact decision to join NAR. The proposed settlement agreement requires only that a single principal need be a NAR member at the time of the class notice.

So all a brokerage has to do to excuse years of anticompetitive conduct in REBNY Brooklyn is manage to prop up

a single NAR member during the time between those years of misconduct and when the class notice was sent out.

With respect to the practice changes touted throughout the settlement papers, as Friedman says in his papers, REBNY's rules were voluntarily amended in January of 2024 purportedly to address the anticompetitive conduct at issue making the practice changes of questionable, if any, value to REBNY class members.

We also raise Rule 23(e) fairness, adequacy, and reasonableness issues with the settlements that, as we state in our reply, the settling parties have not addressed. We submit that any of those issues warrant denial of final approval here. We seek only to protect our REBNY class members' rights and ask that this court deny final approval or in the alternative exercise the court's authority under the severability provisions to strike the opt-in provisions of the settlement and the releases of noncontributing defendants.

Happy to answer any questions Your Honor has. Otherwise, thank you for your time.

THE COURT: Mr. Friedman wasn't able to make it?

MS. McKIM: Unfortunately, no, he was not, Your Honor. We did submit a declaration setting forth the reasons why he was unable to attend.

THE COURT: Thank you.

Mr. Knie, I just want to make sure, I've got several

different objections filed by your firm. I'm assuming all of those were incorporated into your oral arguments.

MR. KNIE: Yes, Your Honor. There was only one objection that was filed for this hearing. It should have been filed shortly before the deadline.

THE COURT: Very good. I have multiple documents.

MR. KNIE: And there are previous objections we filed for the previous hearings.

THE COURT: I had 1606 and 1555, but I appreciate your statement. Thank you.

Professor Monestier, 1552.

Mr. Wang, 1548. How are you, sir?

MR. WANG: I'm good. Thank you very much for granting me this accommodation.

THE COURT: I appreciate your follow-up and making sure you followed the rules, and I'm glad you got your laptop in.

MR. WANG: Thank you. And I probably have to ask a bit more than ten minutes because I prepared three and a half pages to summarize my objection and also to answer plaintiffs' criticism of my objection. So --

THE COURT: You're going to need to limit it to ten minutes. I promise you I've read this. I even granted you the opportunity to bring in your laptop.

MR. WANG: Sure.

THE COURT: Let's keep it even keel here.

MR. WANG: Sure. Of the objectors present in the room, I prepared probably one of the longest objections and received 15 pages of very unfair attacks and mischaracterization of my arguments in the plaintiffs' motion.

I'm not a serial objector. I'm not a lawyer. I write cases and use where a defendant in a two-sided market apparently chose to deceptively structure a transaction in a way in order to like use *Illinois Bricks* to deny real direct purchasers recovery for antitrust injuries, and when I read this case on the page of *New York Times* last year, I just saw a perfect example of that deceptive structuring. So here we are.

I ask for three things. One, for class members who are also homebuyers the court should clarify that the settlement agreement does not preclude their direct purchaser claims as homebuyers against defendants.

Two, for class members who paid more commissions as homebuyers than they did as sellers, the court should reduce the payout to home sellers in order to reserve a piece of the pie to homebuyers who suffered greater and more direct losses as direct purchasers of defendants' home -- of the defendants' services and home sellers.

Mr. Glass misspoke earlier when he said all objectors wanted more money for the class. I don't.

Three, for class members who have been harmed by opt-in brokers, the court should provide a mechanism to challenge their opt-ins.

The DOJ earlier expressed concerns the settlement would force homebuyers to use buyer brokers before they could buy a house and requested that this court -- if this court approves the settlement, it should clarify that such approval does not preclude any claims of this kind of misconduct against homebuyers.

In my SDNY complaint, I said this is something that defendants have always forced buyers to do, and that SDNY -- SDNY complaint I said basically they have bundled or tied homebuyers' use of free MSL [sic] service, quote -- quote/unquote to buyer broker services.

The MSL information is nominally free, but buyers cannot really make use of the information until they hire and pay for buyer brokers. And I allege this coercive sale of buyer broker services violated all sorts of state law, and the tying of MSL services and the buyer broker services also violated Sherman Act.

Now we have heard plaintiffs' answer to my objection. They said, and I quote, To the extent Mr. Wang is alleging NAR rules bar listing brokers from submitting offers from unrepresented buyers to their home seller clients, no such rules exist to plaintiff counsel's knowledge. No such

rule exists to plaintiff counsel's knowledge. So poor research and prepleading investigation is fatal to plaintiffs' sense of triumph here.

The gist of my complaint is that defendants' conspiracy is first and foremost against homebuyers, the coercive sale and the tying and bundling. Plaintiffs are not aware of such practices. So they did not allege the same conduct in their lawsuit. So my factual allegations are different from the plaintiffs, and my allegations were never investigated and never submitted to the jury here in Missouri.

I further allege that homebuyers are direct purchasers of buyer broker services. Just because defendants always tried to structure a transaction in a two-sided market to make it look like home sellers are paying for the commission on both sides does not mean home sellers are actually paying buyer brokers.

This is just a ruse meant to deceive the buyers, their lenders, and Fannie Mae and Freddie Mae [sic], which will not finance homebuyers' use of buyer brokers unless the expenses appear to be paid by home sellers. In realty buyers pay their own brokers. On the day of closing, the buyer's attorney just cuts a check for the buyer's broker like she does for the buyer's mortgage broker, the title insurance, the attorney herself and probably the home inspector, the oil tank inspector, and lead paint inspector.

As I explained in my objection, the relationship between buyer's broker and the listing broker is totally different from the relationship between, say, manufacturer and distributor or between supplier and manufacturer that we see in other *Illinois Bricks* cases. So homebuyers are the direct purchasers of buyer broker services.

Plaintiffs' counsel had nothing to say about that in their complaint or in their response to my objection. I don't deny that listing brokers' commission was also inflated, but it was only a directive and secondary result of the defendants' conspiracy against homebuyers.

I'm paying plaintiff -- I'm saying plaintiff counsel has collusively or foolishly ignored the defendants' conspiracy against homebuyers being the real reason of inflated broker fees in the U.S. market.

Be it foolishness or collusion, defendants got every reason to go along with this lie, and this is why plaintiff counsel got to trial so fast. They bought into the defendants' lie that homebuyers are indirect purchasers of buyer broker services. So that works in the defendants' favor and limits their liability.

Today we see the final act of this collusion. Plaintiffs came to this court asking to categorically preclude all buyers' direct purchaser claims, again in cahoots with defendants to limit defendants of liability to homebuyers even

though they conceded their understanding -- plaintiff counsel's understanding of the facts to be totally different from mine.

In our adversary legal system, if plaintiffs do not allege something, if they don't get to do discovery, they don't get to make the jury make any factual findings related to something plaintiffs never alleged. So this is how our legal system works, and this is how our legal system protects plaintiffs who make different factual allegations by giving them a chance to conduct their own investigation and prosecute their own claims.

Plaintiff counsel say the court should overrule my objection because, again, I quote, Mr. Wang first and principally recites a litany of unsupported claims that NAR rules bar listing brokers from submitting offers from unrepresented buyers to their seller clients and allow buyer brokers to market their services for free.

Well, if it's unproven, that's because it hasn't gotten to discovery, and it won't go in to discovery if my buyer claims are precluded because of my membership in the home seller class. It's important that plaintiff counsel now conceded they haven't made the same allegation. So the Missouri jury never had a say on it. That's enough reason to say there can be no res judicata for buyers' direct purchaser claim.

My second point is simple. Because plaintiff counsel collusively bought into defendants' lie in order to reduce the number of factual disputes in this case and to be the first to take their case to trial and also because buyers haven't got a chance to prove their facts in court yet, I want to make sure there is enough left of NAR's carcass so that buyers can still pick some meat off their bones.

It's unacceptable that NAR is becoming rapidly judgment proof because of its collusive settlement with home sellers. Racial minorities are far more likely to pay more in buyer commission than in seller commission. So NAR's collusion with home seller plaintiffs to settle this case is in effect a collusion against buyers in racial minority communities.

If we look around the room today and the plaintiff counsel, counsel from both sides, I don't think we can say with a lot of confidence that racial minorities are being protected in these settlements. Given NAR's history of inventing racial competence and redlining, it doesn't surprise me that NAR wants to spit on our faces with its dying breath. But the court has no business sanctioning this settlement.

And speaking of realtors being racists, Exhibit 8 is Homestead (phonetic). It withheld to repairs to my apartment, sent stalkers to my door in the middle of the night because in a building full of lawyers, judges, bankers, Homestead decided

it should make an example of an Asian guy for joining rebellion against Homestead.

So when the Cooley lawyers told me that their client was going to settle in this case, I told them over several phone calls that I would have a huge problem with the settlement if they let Homestead opt in. Each time they told me that they don't know whether Homestead would opt in. Each time they said this is out of their hands under the settlement agreement, whether Homestead opts in or not.

So this gives rise to a second problem. Before class members accept this settlement, they got no idea which parties they're actually settling with and how they may challenge such opt-ins. Cooley certainly doesn't know.

THE COURT: Mr. Wang, you've gone way over ten minutes. If you'll look back there, I'm going to give you until three o'clock. That gives you four more -- on that clock back there. I'll give you until three.

MR. WANG: Mr. Glass' argument just now that we can always return to this court to resolve any ambiguity and openness in settlement agreement is not good enough because the ambiguity and openness impacted class members' decision to give this assent -- to give assent to this agreement already.

I just want to quickly address a few points plaintiff and defendant counsel make in their motion for final approval. One, NAR pretends Section 58 -- paragraph 58 is no

big deal. NAR says buyers are free to hire a broker or not. So why not say that in the settlement agreement? Instead we got paragraph 58.

Realtors will say this provision requires all buyers to enter into a written agreement before they can allow buyers to see a property, and ordinary buyers off the street will believe it based on the wording of this settlement agreement. This situation is not even new.

Like I said, I was always required to use buyer's broker before I could make an offer on the property, but this provision now will give defendants new moral authority to do so. For two parties to say buyers are free to hire a broker or not is to tell a lie in open court. It's a lie when we look at NAR's past conduct. It's a lie when we look at what's happening now.

The two sides are now saying, let's not worry about the preclusive effect of NAR settlement on some hypothetical future matters about buyers being forced to use buyer broker services. Well, I have a not so hypothetical matter. It's a pending matter sitting in SNY for almost a year, and Judge Lehrburger said we're staying the matter until Judge Bough first gets a say on whether the Missouri case might preclude any of my claims against the defendants. So it's not hypothetical anymore.

Two, for every story of the defendants' new coercive

sales tactics against buyers, plaintiff counsel repeats this single line. Oh, it's just a violation of the settlement agreement. That was also just a violation of the settlement agreement.

So we must now ask the plaintiff counsel if this coercive sales tactics violated the settlement agreement, shouldn't you have done something about it?

Keller Williams' settlement agreement already received final approval from this court. What they have done in the past months, plaintiff counsel thinks they heard my allegation that Keller Williams' agent continued to force buyers to hire a buyer's broker before they can even make an appointment to see their listings. If you haven't done anything to enforce earlier agreements, why should the court believe you'll do -- enforce the NAR agreement and don't say, oh, opt out and sue them. I'm a class member and you're the class counsel. You ask the court to pay you tens of millions of dollars. Shouldn't you do your job and enforce your agreements?

You haven't shown yourselves to be vigorously enforcing these earlier agreements, and to say you may finally start to take your job seriously from today, well, it's holiday season, but I don't believe in wishful thinking.

So I'll just stop here and thank you very much for the time.

THE COURT: Thank you, sir. Thank you.

No. 1541, Robert Duthler.

No. 1539, Zaffarkahn.

No. 1537, Jeffrey Nordquist.

No. 1532, Michael Mead.

No. 1528, Art Gonzales.

No. 1510, Peter Gustis.

No. 1488, Anthony Phillips.

No. 1454, Sharon Saunders.

No. 1453 Cynthia G-o-r-a-l-s-k-i.

No. 1445, PulteGroup.

No. 1439, Diane Knizer.

No. 1405, Larry Giammo, G-i-a-m-m-o.

Is there anyone I failed to call that has an objection?

Anyone else like to be heard?

Anything in response --

MR. BROWN: Yes, Your Honor.

THE COURT: Come on up, sir. Welcome, sir. What's your name?

MR. BROWN: Yes, Honor. I'm Nate Brown. I'm for the intervenors Rosalie Doyle, John Guerra, and Jessica Winters.

THE COURT: And were those the Texas folks?

MR. BROWN: Yes, Your Honor. I'd like to start with

a point that seems to have been ignored and has been missed, and that's the early results of the proposed implementation or the early implementation of the proposed rules has already exhibited negative effects on the market.

We have seen a decline in existing home sales in the third quarter by 1 percent in price and 1 1/2 percent in volume. Meanwhile, their new home sale counterparts, which are not included in the preclusions of the proposed settlement, have shown an increase of 3.2 percent in price -- in volume and 6 percent in price.

So the -- we've had a unique opportunity for the plaintiffs to test their market thesis, which is that an antitrust violation was occurring, and instead, we have seen that what they've done is they've shifted the market towards new home sellers.

We have not seen an increase by volume in existing homes, which you would think would have happened with lowering commissions and rules that are designed to help consumers. By these estimates, we're looking at a market repression of somewhere in the numbers of $100 billion, what we're going to project annually --

THE COURT: Here's my question for you. I understand you've got some complaints about how this is playing out. It's Round, R-o-u-n-d?

MR. BROWN: Brown.

THE COURT: Brown. I got close. That's pretty close.

So Mr. Brown, here's my concern: This case was filed in 2019. We're basically to 2025. We can see it.

I think it's fair to characterize this is a late motion to intervene. Why don't you get just to the intervention part before you get to what merits your potential class representatives would bring.

MR. BROWN: Sure, yes. So I think the reason for the intervention is I think there was a potential that the plaintiffs were right. We are in a unique opportunity where they are allowed to test their market thesis by the early implementation. The numbers for the U.S. Census Bureau did not come out until October 24th, which had resoundingly said that their attempt to play spell cast on the market and target a low 1.5 percent buyer's commission rate was wrong. It just simply didn't work.

And it's hurt -- and it's a harm to consumers. It's a harm to sellers, and this is dead weight loss in the --

THE COURT: Do you have any case law that would support intervening six years after, five years after a lawsuit?

MR. BROWN: Yes, Your Honor. *Union Electric* has, which is an Eighth Circuit case, has -- particular members of that case were -- had intervened right before a consent decree

was filed for the purpose of appealing. They had waited a long time. They intervened, I believe, for the purpose to just appeal.

So it wasn't that -- the question on timeliness of intervention is the prejudice to the existing parties, right. So we're intervening for the purpose to appeal this case. We don't agree with the final disposition of it. So we're not intervening -- we're not prejudicing the parties in that we're asking them to restart discovery and litigation. It's a very limited purpose. We just want the opportunity to appeal.

THE COURT: Okay. Thank you. Appreciate you, sir.

Mr. Dirks, sir.

MR. DIRKS: Yes, Judge. Almost everything that you heard has been addressed in our lengthy papers. So I'm not going to repeat that. Couple things that stood out to me that maybe weren't in the papers or were a little shocking to me, first of all, let me just say the only expert testimony, the only economist analysis was what we presented. You've heard arguments, but you've heard no evidence from anyone.

I do want to say the Black Tie and the Cunningham objections that were filed in Gibson appear to be related to this settlement. Those are Gibson 527 and 528. The court already overruled them, but just out of -- in the interest of overinclusiveness, just want to raise that in that they're not here to make an objection.

And I do want to -- just couple things that I heard that just aren't true. The REBNY presentation said that our cases had nothing to do with the REBNY MLS. What he didn't tell you is this case settled Gibson. Gibson has allegations directly about nonNAR MLSs and specifically REBNY.

He also said that there was no evidence of claims made within REBNY. That's not true. In the Keough declaration over a thousand claims have been made in New York City, and over a thousand claims have been made in Brooklyn.

The other thing I heard that's just flat out not true, I believe this was the Mullis presentation, that somehow we suggested that Mullis should not be part of the purported MDL. That's not true. We did not say that.

So unless the court has any other questions, you've got I think a hundred pages or more of briefing from us; so I'm not going to rehash all that.

THE COURT: Thank you, Mr. Dirks.

MR. DIRKS: Thanks, Judge.

THE COURT: Mr. Glass.

MR. GLASS: Thank you, Your Honor. Again, Ethan Glass for the National Association of Realtors.

I'm just going to say we disagree with a lot of the things that the objectors said. Unless the court finds any of them material, I'm not going to go through a list, but we do very much appreciate the court's time over many, many years,

many, many hearings and as the court has read, 1,600 filings. This is a case that has long been fought and NAR appreciates the court.

THE COURT: Thank you, sir.

Mr. Dusseault. Did I get it closer? I can say Mr. Frye [sic] all day, but that's just because we've been together for several decades.

MR. DUSSEAULT: Your Honor, thank you. I've heard it a lot of different ways. I take no offense whatsoever.

All I wanted to say is there are only three of the objections that are directed to the HomeServices' settlement of 1593, 1563, and 1561. Everything that was raised has been raised in the papers. We've responded to everything and, again, there does not seem to be any reason for a different handling of those objections than in the prior cases.

Thank you.

THE COURT: We're going to grant Motion No. 1595. I'll get an order out as soon as possible. I appreciate everyone's patience and everyone's best ability to treat each other respectfully in this highly contentious matter. Thank you for that and Happy Thanksgiving.

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REPORTER'S CERTIFICATE

I certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

_____ Date

_____
/s/Gayle M. Wambolt
GAYLE M. WAMBOLT, CRR, RMR
United States Court Reporter